

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No. 1723
T.A. No.

1987.

DATE OF DECISION 12.10.90.Shri Jasraj Goyal PetitionerShri M.L. Duggal, Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentShri R.S. Aggarwal, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

J.P. Sharma
(J.P. Sharma)
Member (Judl.)P.C. Jain
(P.C. Jain)
Member (Admn.)

11

Central Administrative Tribunal
Principal Bench, Delhi.

Regn. No. OA-1723/87.

Date of Decision: 12-10-1990.

Shri Jasraj Goyal

....

Applicant.

V/s-

Union of India & Ors.

....

Respondents.

For the applicant

....

Shri N.L. Duggal,
Advocate.

For the respondents

....

Shri R.S. Aggarwal,
Advocate.

CORAM: Hon'ble Shri P.C. Jain, Member (A).
Hon'ble Shri J.P. Sharma, Member (J).

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma)

The applicant filed this application under Section 19 of the Administrative Tribunals Act, 1985 while last posted as Inspecting Assistant Commissioner of Income Tax, Range I, Amritsar (took voluntary retirement which was granted to him by the order dated 19.1.1987) for arrears of salary and other retirement benefits etc. etc.

2. The applicant in this application claimed the following reliefs: -

- (i) Pension as per rules;
 - (ii) Applicant be allowed commutation of pension;
 - (iii) Gratuity be paid to the applicant;
 - (iv) The applicant should be allowed the encashment of leave.
 - (v) The applicant be paid arrears of pay for the period of his suspension taking into consideration deemed promotion as C.I.T.
 - (vi) The arrears be paid from the date of his suspension, i.e., from 21.2.1978 till the date of joining on reinstatement;
 - (vii) T.A. Bill submitted on transfer of the applicant from New Delhi to Amritsar in January, 1987 to be paid to him immediately.
 - (viii) The applicant be deemed to have been promoted as the Commissioner of Income Tax with effect from 12.3.82.
 - (ix) The salary of the applicant be fixed in the cadre of the Commission of Income Tax with effect from 12.3.82 and all the arrears be paid to him with interest;
 - (x) The applicant be recouped with the expenses of litigation and travelling in regard to the criminal case foisted on the applicant by the Central Bureau of Investigation, Bombay in league with a tax dodger.
 - (xi) The applicant estimates the expenses at Rs.15,000/-.
 - (xii) Interest at market rate be paid -
 - (a) on the pension due;
- le

- (b) on the amount of commutation of pension to which the applicant would have been entitled to had commutation been allowed on the due date;
- (c) on the gratuity;
- (d) encashment of leave;
- (e) on the arrears of pay of his suspension period
- (f) on the T.A. Bill dues;
- (g) on the arrears of salary to which the applicant would have been entitled to in the cadre of Commissioner of Income Tax with effect from 12.3.82;
- (h) on the litigation and travelling expenses referred at (x) above;
- (i) The applicant should be awarded cost of these proceedings.

3. The brief facts of the case are that the applicant was born on 20.6.1936 and joined the respondent's service as Income Tax Officer on 19.5.1960. He was promoted as Assistant Commissioner of Income Tax on 9.3.1972. There was an alleged trap by C.B.I. Bombay on 8.2.1978 and a complaint was lodged. The applicant was suspended on 21.2.1978 and a charge-sheet was submitted against him in the Court of Special Judge, Bombay under the Prevention of Corruption Act, 1947. The applicant was acquitted by the Special Judge, Bombay on 19.9.1986. Subsequently, the applicant moved for the revocation of his suspension order and restoration of seniority to the Central Board of Direct Taxes, New Delhi through the Income Tax Commissioner on 4.12.1986. The applicant gave a notice of retirement under FR-56(k) on 12.1.1987 and also made an application for reinstatement. The suspension of the applicant was revoked on 19.1.1987, and he was posted as Assistant Commissioner of Income Tax, Amritsar. His request for voluntary retirement under F.R. 56(k) was accepted and he stood retired from service from 12.4.87 (A.N.) vide order dated 19.1.87 (A-5).

4. The grievance of the applicant is that in spite of sending reminders to respondent No.2 for fixation of his pay in the cadre of Commissioner of Income Tax, payment of

gratuity, pension, encashment, promotion as Commissioner of Income Tax and benefits under Rule 56(k) of F.R. alongwith arrears of salary since the date of suspension, he was not given any reply. These reminders are Annexure A7(1) to Annexure A7(31) and Annexure ABl to Annexure AB-13.

5. The respondents filed a written reply stating therein that the applicant was placed under suspension with effect from 21.2.1978 as a criminal case was pending against him in the Court of Special Judge, Bombay. The Special Judge, Bombay acquitted the applicant on 19.9.1986 so the suspension of the applicant was revoked as per order dated 19.1.1987 and he was allowed to retire voluntarily under FR-56(k) with effect from the afternoon of 12.4.1987. After his retirement, the applicant requested for regularisation of suspension period as period spent on duty and payment of arrears for the period he remained under suspension. Since the Government had filed an appeal against the acquittal before the Bombay High Court and the appeal having been dismissed on 9.3.87, an S.L.P. was filed before the Hon'ble Supreme Court and that was pending at the time the application was filed by the applicant. In view of this, the claims of the applicant were not settled and paid. The applicant has been granted a provisional pension and a sum of Rs.36,000/- has also been paid to him towards gratuity. The other claims could not be granted because of the pendency of the S.L.P. against the acquittal before the Hon'ble Supreme Court.

6. We have heard the learned counsel for the parties at length and have gone through the records. The cause of suspension of the applicant was that a criminal case was pending against him under the Prevention of Corruption Act, 1947. Since the applicant had been honourably acquitted and no departmental proceedings were pending against him, the applicant is entitled to the same benefits which he would have got while remaining in service without the aforesaid prosecution coming into play. This point has already

been settled in Harnam Singh Vs. General Manager, Northern Railway, reported in ATR 1986 Vol. II CAT 495. The same view has been taken in the State of Punjab Vs. Trivedi reported in 1983 Labour & Industrial Cases p. 1845 and Mohan Lal Vs. Union of India, 1982 Lab. & Ind. Cases p. 594, Delhi. On the principle of equity and natural justice also, the applicant has to be paid the full wages for the period he remained under suspension on account of the pendency of the criminal case. The applicant was reinstated in January, 1987 after revocation of the suspension order dated 21.2.1978 and order under FR-54 has to be passed in the case of the applicant regulating the period of his suspension but that has not been done though there were no departmental proceedings pending against him. In Devendra Pratap Narain Vs. State of U.P. reported in AIR 1962 SC p. 1334, the Hon'ble Supreme Court directed that if a person is acquitted by a Court and no departmental proceedings are pending against him then such a person has to be paid full pay and allowances for the suspension period. Same view was taken in the case of Braham Chand Gupta Vs. Union of India, (1984) Vol. II SCC page 433.

7. The Union of India has only taken an objection that since the S.L.P. was pending before the Hon'ble Supreme Court, the applicant could not be granted the claims, he has asked for, including regularisation of the period of suspension under FR-54.

8. Another plea taken by the Union of India is that there was not a clean acquittal of the applicant. But it is not so as the acquittal of the applicant was maintained by the Apex Court. The learned counsel for the applicant filed a copy of the judgment passed by the Hon'ble Supreme Court of India on 31.7.1989 in S.L.P. 2475-76 of 1987, State of Maharashtra Vs. J.B. Goyal & Anr., where the Special Leave Petitions were dismissed. The reply filed by the respondents also shows that the provisional pension has been granted and a sum of Rs.36,000/- has been paid to the applicant towards gratuity. There is no reason why now when the case has ended, the applicant should not be paid all the claims for which he is legally entitled according to the rules.

9. The applicant has also claimed that he should be deemed to have been promoted as Commissioner of Income Tax with effect from 12.3.1982 i.e., the date on which some of his juniors were promoted. In sub-para 6 of para 6 of his application, he averred that "The applicant is sure that the Applicant's name was considered for promotion and sealed cover procedure was followed". In reply to this averment, the respondents in their written statement stated it as "Matter of record". Thus, they have not denied the assumption of the applicant that his name was considered for promotion and sealed cover procedure adopted in his case. On his reinstatement in service vide order dated 19.1.1987 (A-4), the applicant was posted as Inspecting Assistant Commissioner of Income Tax, Amritsar. In case the sealed cover procedure had been followed by the D.P.C. in the case of the applicant (which the respondents have not categorically accepted), it was incumbent on the part of the respondents to open the sealed cover so as to find out the recommendations of the D.P.C. and to take action thereon soon after the applicant was reinstated.

10. On the claim of the applicant for arrears of salary for the period of suspension, the respondents in sub-para 12 of para 6 of the written statement stated that "The representation filed by applicant is under the active consideration of the Government. It is submitted that with the filing of SLP before the Supreme Court against the judgment of the Special Judge, Bombay acquitting the applicant, the proceedings against the applicant are deemed to be pending. Accordingly, the applicant is not eligible for further amount by way of salary during the period of suspension or promotion to the grade of Commissioner of Income Tax." From this, it

6

is clear that the respondents have been waiting only for the final outcome of the criminal case consequent on the filing of SLP before the Hon'ble Supreme Court. With the dismissal of the SLPs by the Hon'ble Supreme Court vide order dated 31.7.89, it is to be held that the acquittal of the applicant is final and with that the objection of the respondents also ends. It is an admitted fact that no departmental proceedings had been initiated against the applicant after his reinstatement in service. In fact, at the time the respondents had taken a decision to reinstate the applicant, the appropriate authority was also to decide as to how the suspension period should be treated. In consideration of the fact that he was allowed to retire under F.R. 56(k) without any stipulation and the SLPs filed in the criminal case against the applicant have since been dismissed by the Hon'ble Supreme Court, we hold that the applicant becomes entitled to all the retirement benefits which an employee in the normal course gets, on retirement under F.R. 56(k).

11. In view of the foregoing discussion, the application is allowed in terms of the following directions: -

- (a) The applicant is entitled to arrears of pay and allowances for the period he remained under suspension i.e., from 21.2.1978 to 19.1.1987.
- (b) In case the sealed cover procedure had been adopted by the D.P.C., the sealed cover will be opened, if not already done, by the respondents so as to take immediate action on the recommendations of the D.P.C. In case the D.P.C. had recommended his promotion, the applicant will get all the monetary benefits on the basis of his revised pay as if he was

on duty and not under suspension. In case the applicant was not recommended for promotion by the D.P.C., this direction will become redundant and ineffective.

- (c) The respondents will pay to the applicant all pensionary benefits, such as gratuity, encashment of leave due to him, if any, etc., as are admissible under the rules applicable to retirement under FR-56(k). If the applicant was recommended for promotion by the D.P.C. in the sealed cover procedure as stated above, the applicant will be entitled to all the pensionary benefits calculated on the basis of his revised pay.
- (d) The respondents will also pay to the applicant his transfer T.A. claim in accordance with the rules applicable to retirement under FR-56(k).
- (e) The respondents will further pay to the applicant Simple Interest at the rate of 12% on the unpaid amount of gratuity.

12. This order shall be complied with within a period of two months from the date a copy of this judgment is received by the respondents.

13. In the circumstances of the case, the parties are left to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
Member(J)

P. C. Jain
(P.C. JAIN)
Member(A)